

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DANIEL HUWE,

Petitioner,

vs.

JEFFREY A. UTTECHT,

Respondent.

No. 13-cv-00085-JPH

ORDER ADOPTING REPORT AND
RECOMMENDATION

BEFORE THE COURT is the Magistrate Judge's Report and Recommendation entered August 14, 2013, ECF No. 13, recommending Petitioner's petition for Writ of Habeas Corpus, ECF No. 4, be denied. Petitioner filed an objection and asked the court to issue a certificate of appealability in the event the court adopts the Magistrate Judge's recommendation. ECF No. 20 at page 6, n. 2.

Petitioner's objection restates many of the same arguments addressed by the Magistrate Judge's report. Petitioner alleges the issues he raises were "either

1 decided contrary to or unreasonably under U.S. Supreme Court precedent as cited
2 in Petitioner's Memorandum of Law." ECF No. 20 at page 4.

3 Huwe again alleges insufficiency of the evidence because there was "no
4 evidence of an intent to kill or assault." Petitioner's Memorandum at 2 (a), ECF
5 No. 20. The evidence shows Huwe shot one woman twice and another once.
6 Proof a defendant fired a weapon at a victim, is, of course, sufficient to justify a
7 finding of intent to kill. *State v. Hoffman*, 116 Wn. 2d 51, 84-85 (1991). The
8 requisite intent for the assault charge required the jury to find defendant "with the
9 intent to inflict great bodily harm" assaults another with a firearm. RCW
10 9A.36.011(1)(a). The evidence was clearly sufficient to support the jury's verdict.

11 Petitioner again asserts prosecutorial misconduct; vicinage; juror bias and
12 violation of the presumption of innocence; ineffective assistance of counsel and
13 judicial bias. Petitioner's Memorandum at 2(b); 3(c); 4(d); 5(e); 6(f), ECF No. 20.

14 The magistrate judge found Huwe failed to show the state court's
15 determinations were contrary to or involved an unreasonable application of clearly
16 established Supreme Court precedent.

17 Having reviewed the Report and Recommendation, the Court adopts the
18 Magistrate Judge's recommendation. Accordingly, **IT IS HEREBY ORDERED:**

19 1. The Report and Recommendation, **ECF No. 13** is **ADOPTED** in its
entirety.

3. The request for a Certificate of Appealability is denied as an appeal

IT IS SO ORDERED. The District Court Clerk is directed to enter this Order and forward uncertified copies to the parties and Magistrate Judge Hutton.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
Chief United States District Court Judge